

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4774

IN THE MATTER OF:

Served February 27, 1996

Investigation of Unauthorized)
Operations of ALL-STAR PRESIDENTIAL,)
LLC, and PRESIDENTIAL COACH CO. and)
Affiliation with PRESIDENTIAL)
LIMOUSINE SERVICE, INC., WMATC)
No. 148)

Case No. MP-95-82

This investigation was prompted by the award of a shuttle bus contract by the U.S. Department of Agriculture, Forest Service, to All-Star Presidential, LLC (All-Star), and Presidential Coach Co., on September 11, 1995. The contract calls for service between Washington, DC, and Arlington, VA, commencing October 1, 1995. Neither carrier has authority from this Commission to perform such transportation.

The investigation was initiated on November 14 by ordering All-Star and Presidential Coach to produce any and all records in their possession, custody or control relating to the Forest Service contract, and because the notice of award indicated both carriers were located at the same address as Presidential Limousine Service, Inc. (Presidential Limo), WMATC No. 148, we directed Presidential Limo to produce any such records in its possession, custody or control, as well. We also directed each of the three respondents to file a current list of officers, directors and shareholders.

On November 16, Presidential Limo filed a contract tariff effective November 16, 1995, and expiring January 16, 1996, covering the service described in the contract awarded to All-Star and Presidential Coach. That tariff was subsequently extended to March 15, 1996. It thus appears that All-Star and Presidential Coach operated the Forest Service contract from October 1, 1995, through November 15, 1995, in violation of Article XI, Section 6, of the Compact, which provides that a person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation.

Respondent's defense, while not entirely clear, appears to be that the contract was actually performed by All-Star, that before operations commenced Presidential Limo was merged into All-Star, and that, therefore, the shuttle service was operated lawfully under Certificate No. 148. We find this defense lacking both as a matter of law and as a matter of fact.

Article XII, Section 3(a)(i), of the Compact, provides that a carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan

District. Respondents never applied for Commission approval of merger or consolidation. Only an unmerged Presidential Limo may conduct operations under Certificate No. 148 at this time.

We doubt the existence of a merger, in any event. According to respondents' list of officers, directors and shareholders, respondents' president, Mr. Theartice Boyd, currently owns one hundred percent of Presidential Limo but only one third of All-Star. This is not consistent with the concept of two or more corporations merging into one. Further, respondents fail to explain why the contract bid was submitted in the names of Presidential Coach and All-Star, instead of just All-Star, or how a tariff could be filed in Presidential Limo's name after it had merged into All-Star. Respondents' failure to produce copies of any merger documents, despite assurances that such documents were forthcoming,¹ weighs heavily in our finding that no merger occurred.

Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.² "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.³

Respondents assert that operation of the shuttle service prior to November 16 was not willfully unlawful because respondents believed they had in fact merged and could operate under Presidential Limo's certificate of authority. We find this professed belief unreasonable. First, as the president and sole shareholder of Carrier No. 148, Mr. Boyd is charged with the knowledge that such a merger, if it really took place, requires approval beforehand under Article XII, Section 3, of the Compact. As respondents' president, Mr. Boyd's knowledge may be attributed to all respondents. Second, when the Forest Service wrote to All-Star on August 18, 1995,⁴ explaining that Commission staff had advised the Forest Service that All-Star did not have the necessary authority, All-Star should have contacted the Commission at

¹ We also note that respondents have not filed all responsive documents in their possession, custody or control. Respondents produced a letter dated August 18, 1995, from the Forest Service requesting additional information as a prerequisite to an award. The next document in chronological order produced by respondents is the notice of award, dated September 11, 1995. The intervening response is missing.

² DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 (Dec. 20, 1993).

³ Id.

⁴ See supra, n.1 (discussing August 18 letter).

that time to clear up any misunderstanding. Consequently, we find that the violations committed by respondents were knowing and willful within the meaning of the Compact.

According to our calculations, respondents performed the Forest Service contract without proper authority on thirty-one separate occasions. We will assess a civil forfeiture against respondents, jointly and severally, in the amount of \$250 per day, for a total of \$7,750. We will suspend all but \$1,150, in awareness that had Presidential Limo bid on the contract and filed it as a contract tariff, the offense would have been limited to operating under common control without Commission approval, which, on these facts, is a less egregious offense than operating without a certificate of authority.

In addition, we shall order All-Star and Presidential Coach to cease and desist any and all operations in the Metropolitan District, and considering that no application has yet been filed for approval of common control, we shall allow Mr. Boyd thirty days to show cause why he should not be ordered to divest his ownership interests in, and resign his employment positions with, those two carriers.

THEREFORE, IT IS ORDERED:

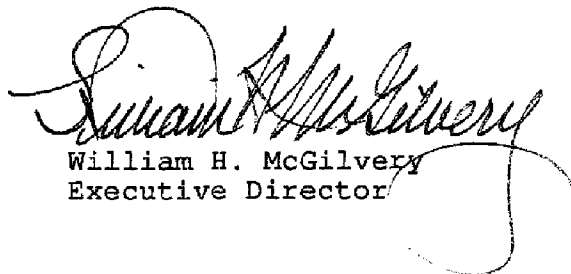
1. That the Commission hereby assesses a civil forfeiture against respondents, jointly and severally, in the amount of \$1,150, for knowing and willful violations of the Compact, and that respondents are hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of one thousand one hundred fifty dollars (\$1,150).

2. That All-Star Presidential, LLC, and Presidential Coach Co., are hereby directed to cease and desist from transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by this Commission.

3. That Mr. Theartice Boyd shall have thirty days from the date of this order to show cause why he should not be ordered to divest his ownership interests in, and resign his employment positions with, All-Star Presidential, LLC, and Presidential Coach Co.

4. That Mr. Boyd may file within 15 days from the date of this order a request for oral hearing, provided that said request describes the evidence to be adduced at such hearing and explains the reasons why the evidence could not be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER AND LIGON:


William H. McGilver
Executive Director